EXHIBIT B

OAO 88 (Rev. 12/06) Subpoena in a Civil Case

Issued by the

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ORACLE USA, INC., et al.,

v.

SAP AG, et al.

SUBPOENA IN A CIVIL CASE

Case Number:[1] 07-CV-1658 PJH (EDL)

TO: Folger Levin & Kahn LLP
275 Battery Street, 23rd Floor
San Francisco, CA 94111
T: (415) 986-2800

☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

See Exhibit A (attached hereto)

PLACE	DATE AND TIME
Jones Day, 555 California St., 26th Fl., San Francisco, CA 94104	10/7/09, 9:30 a.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
(Attorney for Defendants)	9/21/09

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
Patrick Delahunty
Jones Day, 555 California St., 26th Fl., San Francisco, CA 94104
T: (415) 626-3939

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

[1] If action is pending in district other than district of issuance, state district under case number.

AO 88 (Rev 12/06) Subpoena in a Civil Case

PROOF OF SERVICE

DATE PLACE

SERVED:

SERVED ON (PRINT NAME) MANNER OF SERVICE

SERVED BY (PRINT NAME) TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
DATE

_____
SIGNATURE OF SERVER

_____
ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(D) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

EXHIBIT A

DEFINITIONS

Unless otherwise indicated, the following definitions shall apply to each of the below Requests for Production and Inspection.

1. The term "PARTY" refers to any plaintiff, defendant, cross complainant, or cross defendant in *PeopleSoft Inc., et al., v. Oracle Corporation, et al.*, Case No. RG03101434, Superior Court of the State of California, County of Alameda (filed June 13, 2003).

2. The term "DOCUMENT(S)" means and includes, without limitation, written, printed, typed, recorded, computerized, electronic, taped, graphic or other matter, in whatever form, whether in final or draft, including, but not limited to, all materials and things that constitute "writings" or "recordings" within the meaning of Rule 1001 of the Federal Rules of Evidence or documents within the meaning of Rule 34 of the Federal Rules of Civil Procedure. The terms "DOCUMENTS(S)" further includes, but is not limited to, the original and each copy of any writings, including any copy that differs in any respect from the original or other versions, of the DOCUMENTS(S), such as, but not limited to, copies containing notations, insertions, corrections, marginal notes, or any other variations; records, or files; correspondence; reports; memoranda; calendars; diaries; minutes; electronic messages; voicemail; email; telephone message records or logs; computer and network activity logs; data on hard drives; backup data; data on removable computer storage media such as tapes, disks, and cards; printouts; document image files; web pages; databases; spreadsheets; software; hardware; books; ledgers; journals; orders; invoices; bills; vouchers; checks; statements; worksheets; summaries; compilations; computations; charts; diagrams; graphic presentations; drawings; films; charts; digital or chemical process photographs; video, phonographic, tape, or digital records or transcripts; drafts; jottings; and notes.

3. The terms "and" as well as "or" shall be construed disjunctively and conjunctively as necessary in order to bring within the scope of the following Requests all information which might otherwise be construed to be outside their scope.

4. The use of the singular form of any word includes the plural and vice versa.

5. Any pronoun shall be construed to refer to the masculine, feminine, or neuter gender as in each case is most inclusive.

REQUESTS FOR PRODUCTION AND INSPECTION

REQUEST FOR PRODUCTION NO. 1:

All DOCUMENTS filed in any court in connection with *PeopleSoft Inc., et al., v. Oracle Corporation, et al.,* Case No. RG03101434, Superior Court of the State of California, County of Alameda (filed June 13, 2003).

REQUEST FOR PRODUCTION NO. 2:

All DOCUMENTS served or produced by any PARTY on or to any other PARTY during the course of discovery in *PeopleSoft Inc., et al., v. Oracle Corporation, et al.,* Case No. RG03101434, (filed June 13, 2003), including but not limited to: Requests for Production, Requests for Admission, Interrogatories, Subpoenas, and responses thereto including but not limited to documents produced in response to Requests for Production and/or Subpoenas, and relating to the allegation in Paragraph 38 of the Second Amended Complaint: "Oracle hoped to harm PeopleSoft as a competitor in the applications software space, adversely affect PeopleSoft's sales, poach PeopleSoft's prospective customers, and otherwise interfere with PeopleSoft's customer relationships through a concerted campaign of fear, uncertainty and doubt."

REQUEST FOR PRODUCTION NO. 3:

All DOCUMENTS reflecting the transcription of a court hearing or deposition in connection with *PeopleSoft Inc., et al., v. Oracle Corporation, et al.,* Case No. RG03101434, Superior Court of the State of California, County of Alameda (filed June 13, 2003).

SFI-618994v2

EXHIBIT C

FOLGER LEVIN & KAHN LLP
Michael F. Kelleher (SB # 165493, mkelleher@flk.com)
Embarcadero Center West
275 Battery Street, 23rd Floor
San Francisco, CA 94111
Telephone: (415) 986-2800
Attorneys for Third-Party Folger Levin & Kahn LLP

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

ORACLE USA, INC., *et al.*,

Plaintiffs,

v.

SAP AG, *et al.*,

Defendants.

CASE NO. 07-CV-1658 PJH (EDL)

NON-PARTY FOLGER LEVIN & KAHN LLP'S OBJECTIONS TO THIRD-PARTY SUBPOENA SERVED BY DEFENDANTS

TO DEFENDANTS AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 45(b)(1) of the Federal Rules of Civil Procedure, non-party Folger Levin & Kahn LLP ("FLK"), hereby objects to each and every request and definition contained in the third-party subpoena noticed by Defendants SAP AG, *et al.* (collectively, "Defendants") on September 21, 2009 and served on FLK on September 22, 2009 (the "Subpoena"), for the reasons set forth below.

OBJECTIONS

1. FLK objects to Defendants' Subpoena in its entirety because the Subpoena seeks documents that are neither relevant to the claims or defenses asserted by the parties to this litigation nor the subject matter of this litigation, and are not reasonably calculated to lead to the discovery of admissible evidence. The Subpoena seeks pleadings, produced documents, and transcripts from an unrelated case in which FLK represented PeopleSoft and members of its Board of Directors in litigation against Oracle concerning Oracle's tender offer for PeopleSoft. That tender offer spawned several related lawsuits, including the antitrust trial (over which Judge

Walker presided and for which Judge Legge acted as a special master) and state court litigation initiated by PeopleSoft against Oracle that centered on allegations that Oracle's tender offer was not made in good faith and that it was designed to harm PeopleSoft's business. The eventual success of the tender offer resulted in the dismissal of the litigation on the eve of trial. In the intervening 18 months, the parties engaged in very active litigation supervised by Judge Sabraw in the Alameda Superior Court. The voluminous pleadings and transcripts from the *PeopleSoft v. Oracle* litigation are not relevant to this action.

2. FLK further objects that the Subpoena seeks irrelevant documents because it is overly broad, requesting "All Documents filed in any court" (Req. No. 1), "All Documents served or produced by any Party on or to any other Party" (Req. No. 2), "All Documents reflecting the transcription of a court hearing" (Req. No. 3), and "All Documents reflecting the transcription of a deposition" (*id.*) relating to the tender offer litigation subject matter of the requests. It was on grounds of relevance that similar discovery efforts by Defendants in 2008, aimed at the parallel antitrust case brought by the Department of Justice to block the Oracle/PeopleSoft merger, were rejected by the Special Discovery Master, Judge Legge, earlier in this case. *See* Report and Recommendations Re: Discovery Hearing No. 1, filed on March 14, 2008 [Docket 66] ("[t]he subject matter of the two proceedings, the 2004 antitrust proceeding and this downloading case, are different.") March 14, 2008 Report and Recommendations Re Discovery Hearing No. 1 at p. 8 [Docket # 66]. The same reasoning applies equally to the companion state court case, *PeopleSoft v. Oracle*.

3. FLK objects to the Subpoena in its entirety as overly broad, unduly burdensome and oppressive because the burden of reviewing and designating irrelevant and confidential documents outweighs any alleged need for the requested discovery. The *PeopleSoft v. Oracle* case involved extensive discovery of third-party customers of PeopleSoft and Oracle, and many of the pleadings, transcripts and produced documents include information designated by those third-party customers as confidential under the protective order in that litigation. It will be very burdensome to sift through approximately 1500 pleadings and several transcripts, that have embedded within them information designated by third parties as confidential and which require

notice to potentially dozens of third parties and an opportunity to contest the disclosure of their information. Third party confidentiality designations may apply to many parts of any particular pleading, transcript or document subject to the Subpoena's broad sweep. The Protective Order from that litigation would require notice to and opportunity to object by those third parties. This time-consuming and burdensome exercise is a waste of time for the parties, and will potentially embroil the Court in several sideline disputes with third parties (indeed, this was the very role Judge Legge had in the antitrust case and likely contributed to his order denying the antitrust case discovery). Thus, the burden, including the substantial amount of time and expense implicated by the Subpoena's request for documents that are equally available to Defendants and subject to any applicable Protective Order, substantially outweighs any alleged need for such information. In addition, the Subpoena is harassing and oppressive for the same reasons, including because the requested discovery is not relevant to this litigation.

4. FLK further objects to the Subpoena in its entirety because it requests information that is equally — and publicly — available to Defendants. For example, Subpoena Request No. 1 seeks "All Documents filed in any court in connection with *PeopleSoft Inc., et al., v. Oracle Corporation, et al.*" It is unreasonable, unduly burdensome, and oppressive to request FLK, a non-party law firm, to review in excess of 1500 pleadings (i.e., documents, not number of pages) and designate same. Federal Rule of Civil Procedure 45 does not permit Defendants to shift the burden of searching through publicly available court files on non-parties. Indeed, FLK is informed and believes that Defendants informed Oracle that Defendants had been able to locate pleadings from the case through the court's online system. Defendants should proceed in that fashion if they so strongly believe that is a good use of their resources.

5. FLK further objects to the Subpoena in its entirety because Defendants have failed to make any attempt to focus on information pertaining to the actual customers in dispute. Defendants have stated in meet and confer that the Subpoena is focused on their lost profits causation defense. At the same time, Defendants refuse to refine their Subpoena, in light of the extreme irrelevance, and confidentiality issues associated with it, to any particular customer or group of customers. For this reason alone, the Subpoena is overly broad, unduly burdensome,

oppressive, and seeks documents that are neither relevant to the claims or defenses asserted by the parties to this litigation nor the subject matter of this litigation, and are not reasonably calculated to lead to the discovery of admissible evidence.

6. FLK objects to the Subpoena in its entirety to the extent that it calls for production of documents that are protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privileges or immunities.

7. FLK further objects that Oracle, as the current holder of the privilege that formerly belonged to PeopleSoft, has indicated that Oracle intends to object to the Subpoena, and FLK cannot produce the documents without resolution of Oracle's objections.

8. FLK further objects to the Subpoena in its entirety to the extent that it calls for the search of electronically stored information in FLK's email system, document management system and backup storage (the "Systems"). Searching the Systems would be extremely burdensome and expensive. FLK did not use these systems as a primary source for the storage of the information sought by the Subpoena, and to the extent that information sought by the Subpoena is in the Systems, it is not reasonably accessible. Moreover, to the extent that information is in the Systems, it is likely to be protected by attorney-client privilege and/or work product, and segregating any non-privileged documents would be unduly burdensome and expensive.

9. FLK further objects to the Subpoena in its entirety because Oracle and/or its counsel are likely to have all the information sought by Defendants, and there no need to unfairly burden non-party FLK to obtain information in the possession of Oracle.

10. FLK further objects that the request for production of responsive documents by October 14, 2009 is unreasonable. As described above, many electronic files would have to be reviewed to locate documents within the scope of this request. FLK would need substantially more time to comply with this request than was allowed in the subpoena.

11. FLK further objects that production of the requested documents would entail significant expense and inconvenience to FLK. Due to the broad nature of the request, thousands of pages of electronic documents might have to be reviewed in order to locate responsive

documents. Because of the unreasonable expense involved in locating, reviewing and producing responsive documents, FLK objects to the request unless Defendants agree to pay all costs and attorneys' fees. Further, as the request covers documents already available to Defendants through discovery from Oracle in the above-entitled action, this expense and inconvenience is completely unnecessary.

Response to Request No. 1:

FLK incorporates the foregoing objections in their entirety.

Response to Request No. 2:

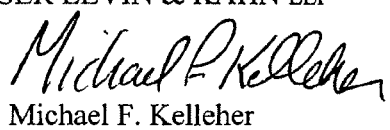
FLK incorporates the foregoing objections in their entirety.

Response to Request No. 3:

FLK incorporates the foregoing objections in their entirety.

Dated: October 14, 2009

FOLGER LEVIN & KAHN LLP



Michael F. Kelleher
Attorneys for Non-Party
Folger Levin & Kahn LLP

73034\2001\670073.1

EXHIBIT D

RE: Status update on Folger & Levin index and Henley documents

From: Jason McDonell 12/09/2009 03:40 PM
Extension: 35820

To: Howard, Geoff

Cc: "Hann, Bree", "'Elaine Wallace'", "House, Holly", "Jane L Froyd", "Joshua L Fuchs", "Scott Cowan", "Greg Lanier", "Alinder, Zachary J."

Thank you.

Jason McDonell, Esq.
Jones Day
555 California Street, 26th Floor
San Francisco, CA 94104-1500
SF Office Main Tel.: (415) 626-3939
Direct Dial: (415) 875-5820
Fax: (415) 875-5700
Email: jmcdonell@jonesday.com

"Howard, Geoff" Jason, The answer is yes. 12/09/2009 03:38:39 PM

From: "Howard, Geoff" <geoff.howard@bingham.com>
To: "Jason McDonell" <jmcdonell@JonesDay.com>
Cc: "Hann, Bree" <bree.hann@bingham.com>, "'Elaine Wallace'" <ewallace@JonesDay.com>, "House, Holly" <holly.house@bingham.com>, "Jane L Froyd" <jfroyd@JonesDay.com>, "Joshua L Fuchs" <jlfuchs@JonesDay.com>, "Scott Cowan" <swcowan@JonesDay.com>, "Greg Lanier" <tglanier@JonesDay.com>, "Alinder, Zachary J." <zachary.alinder@bingham.com>
Date: 12/09/2009 03:38 PM
Subject: RE: Status update on Folger & Levin index and Henley documents

Jason,
The answer is yes.
Thanks,
Geoff

From: Jason McDonell [mailto:jmcdonell@JonesDay.com]
Sent: Wednesday, December 09, 2009 3:37 PM
To: Howard, Geoff
Cc: Hann, Bree; 'Elaine Wallace'; House, Holly; Jane L Froyd; Joshua L Fuchs; Scott Cowan; Greg Lanier; Alinder, Zachary J.
Subject: RE: Status update on Folger & Levin index and Henley documents

Geoff,

Please let me have your response to the attached as soon as possible. Thanks.

Jason McDonell, Esq.
Jones Day
555 California Street, 26th Floor
San Francisco, CA 94104-1500
SF Office Main Tel.: (415) 626-3939
Direct Dial: (415) 875-5820
Fax: (415) 875-5700
Email: jmcdonell@jonesday.com

From: Jason McDonell/JonesDay

To: "Howard, Geoff" <geoff.howard@bingham.com>

Cc: "Hann, Bree" <bree.hann@bingham.com>, "'Elaine Wallace'" <ewallace@JonesDay.com>, "House, Holly" <holly.house@bingham.com>, "Jane L Froyd" <jfroyd@JonesDay.com>, "Joshua L Fuchs" <jlfuchs@JonesDay.com>, "Scott Cowan" <swcowan@JonesDay.com>, "Greg Lanier" <tglanier@JonesDay.com>, "Alinder, Zachary J." <zachary.alinder@bingham.com>

Date: 12/07/2009 05:33 PM

Subject: RE: Status update on Folger & Levin index and Henley documents

Geoff,

In connection with our motion to compel on this issue, can we assume that it need only be directed at Oracle and that we do not need to move against Folger Levin?

Thanks.

Jason McDonell, Esq.
Jones Day
555 California Street, 26th Floor
San Francisco, CA 94104-1500
SF Office Main Tel.: (415) 626-3939
Direct Dial: (415) 875-5820
Fax: (415) 875-5700
Email: jmcdonell@jonesday.com

From: "Howard, Geoff" <geoff.howard@bingham.com>

To: "'Elaine Wallace'" <ewallace@JonesDay.com>

Cc: "House, Holly" <holly.house@bingham.com>, "Hann, Bree" <bree.hann@bingham.com>, "Alinder, Zachary J." <zachary.alinder@bingham.com>, "Greg Lanier" <tglanier@JonesDay.com>, "Jason McDonell" <jmcdonell@JonesDay.com>, "Scott Cowan" <swcowan@JonesDay.com>, "Jane L Froyd" <jfroyd@JonesDay.com>, "Joshua L Fuchs" <jlfuchs@JonesDay.com>

Date: 11/30/2009 07:19 AM

Su RE: Status update on Folger & Levin index and Henley documents
bje
ct:

Elaine,
Attached is the pleadings index maintained by the Folger firm related to the Alameda litigation between PeopleSoft and Oracle. Please contact Bingham directly, and not Folger, should you wish to request review and production of any items on the index. Oracle reserves all of its rights with respect to any such requests, including on the grounds already stated in the objections, in meet and confer correspondence, and in the parties' discovery conference statements. Indeed, a cursory review of the index reveals that this exercise by Defendants is a waste of the parties time and will not lead to the discovery of admissible evidence.
Thanks,
Geoff

From: Elaine Wallace [mailto:ewallace@JonesDay.com]
Sent: Monday, November 23, 2009 5:29 PM
To: Howard, Geoff
Cc: House, Holly; Hann, Bree; Alinder, Zachary J.; Greg Lanier; Jason McDonell; Scott Cowan; Jane L Froyd; Joshua L Fuchs
Subject: Status update on Folger & Levin index and Henley documents

Geoff,

Can you give us an update on the status of the Folger & Levin index and Oracle's production of Jeff Henley documents? I understand from your email to Scott last week that there are no responsive documents to be produced for Harry You.

Regards,

Elaine Wallace
JONES DAY
555 California Street, 26th Floor
San Francisco, CA 94104
(415) 875-5831 (Direct Dial)
(415) 875-5700 (Fax)
ewallace@jonesday.com

==========

==========

EXHIBIT E

BINGHAM

Geoffrey M. Howard
Direct Phone: 415.393.2485
Direct Fax: 415.262.9212
geoff.howard@bingham.com

October 26, 2009

Via Email

Jason McDonell
Jones Day
555 California Street
26th Floor
San Francisco, California 94104

Re: Oracle v. SAP

Dear Jason:

This follows up on the portion of our meet and confer discussion Monday afternoon focusing on Defendants' discovery related to the prior PeopleSoft v. Oracle tender offer litigation. As we explained on the call, and have detailed in prior correspondence, we believe Defendants' efforts to open up an entirely new, irrelevant, and burdensome line of discovery at this late date contradicts the guidance provided by Judge Laporte (and exploited by Defendants in cutting Oracle off on purportedly new avenues of damages) that the parties should be winding down. In particular, we discussed Defendants' subpoena to the Folger Levin law firm, and their naming of Oracle's General Counsel (Dorian Daley), Chairman (Jeff Henley) and former CFO (Harry You) as custodians, as pieces of this new discovery effort.

As for the Folger subpoena, Defendants indicated that the reason for that subpoena was to address Oracle's contention that SAP created fear, uncertainty and doubt (FUD) within the PeopleSoft installed base, causing customers to jump ship to SAP. Although Oracle does contend that SAP created and exploited FUD, both before and after Oracle acquired PeopleSoft, that in itself is not remarkable -- FUD, for better or worse, is a feature of competition in the software industry. Oracle's contention is different: Oracle contends that SAP lured customers with 50% or more discounts on support pricing made possible only because of SAP theft and misuse of Oracle's intellectual property. That SAP deliberately created this "Safe Passage" to SAP through TN and/or safe harbor at TN for former PeopleSoft customers at a time when there was already FUD as a result of the takeover battle magnified the adverse impact on Oracle. Discovery has confirmed this was known and intended by SAP. What was said or done by either Oracle or PeopleSoft in their takeover tussle has no bearing on this.

The other basis you offered to justify opening up the litigation files in the Oracle/PeopleSoft litigation was to test whether PeopleSoft asserted Oracle had itself created FUD in connection with its tender offer for PeopleSoft and whether Oracle complained that PeopleSoft was hurting its own customer base. As a matter of law, we

Boston
Hartford
Hong Kong
London
Los Angeles
New York
Orange County
San Francisco
Santa Monica
Silicon Valley
Tokyo
Walnut Creek
Washington

Bingham McCutchen LLP
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bingham.com

disagree that statements made by an adverse acquisition target against the interest of the acquirer bind the acquirer as if it made them. As a matter of fact, Oracle does not dispute that Oracle and PeopleSoft each alleged the other had engaged in acts aimed at creating FUD aimed at the PeopleSoft customer base. These allegations were never decided by a fact-finder. But even if the mere existence of them has some bearing on the issues in this case, to the extent you are looking to prove the allegations were made, we agree they were. Therefore there is no need to open up the vast pleading files and other documents in the case to prove this.

For these reasons, and the ones set forth in more detail in the Folger objections (including the burden of reviewing 1500 pleadings and addressing the various third party confidentiality issues associated with them), we continue to believe the PeopleSoft case discovery is improper. Moreover, we understand that other than these pleadings and a small number of deposition transcripts, Folger does not have other responsive documents. I believe that was the information you said you wanted by way of a further joint phone call with Folger, so there does not appear to be a need for one at this point. If Defendants will not withdraw the subpoena, we intend to raise the issue with Judge Laporte at the November 17 discovery conference and, if necessary, to seek a protective order.

Regarding your naming of Dorian Daley as a "document custodian," the discussion above applies with greater force to her. You identified two bases for seeking her documents. The first was her "involvement" in the prior tender offer litigation. That basis is insufficient, particularly given that her involvement was limited to her role as litigation counsel. The second basis you offered was her involvement in the investigation that led to Oracle's complaint in this case. That is also an insufficient basis to seek her documents. Her role in the investigation was also as litigation counsel, and you have offered no further proffer or basis for any good faith belief you have that you would obtain relevant, responsive, non-privileged evidence, or anything that would lead to it. To the contrary, the timing suggests that you have named Ms. Daley as a custodian in retaliation for Oracle seeking the documents of Mr. Junge, SAP AG's General Counsel. Mr. Cowan's suggestion on the call that we agree to a scaled back logging protocol for each merely confirms this assessment. The two are not comparable. Mr. Junge participated as a business executive in the underlying events that led to the litigation, including the decision by SAP to buy TomorrowNow after it knew TomorrowNow acted illegally. Ms. Daley, as litigation counsel investigating TomorrowNow's downloading from Oracle's website, does not open herself up to discovery merely by virtue of investigating the activities Mr. Junge facilitated, despite the equivalence in their positions. Accordingly, we intend to raise this issue with the Court on November 17 and seek a protective order if necessary.

Finally, with only six weeks left in fact discovery, you also have just sought the documents, and indicated you would seek the depositions, of Oracle former CEO and current Chairman, Jeff Henley, and its former CFO Harry You. You indicated that you sought both witnesses due to their presumed involvement in the valuation of the PeopleSoft acquisition, and their involvement in the underlying litigation. As with Ms. Daley, there is no basis on which to involve these witnesses relating to the

PeopleSoft litigation. To the extent your focus relates to valuation of PeopleSoft by Oracle, we agree to search for relevant, responsive, non-privileged documents on that topic and produce them.

Sincerely yours,

Geoff Howard (K.D.)

Geoffrey M. Howard

EXHIBIT F

C-07-1658 PJH (EDL)

ORACLE CORP. V. SAP AG, et al.

TRANSCRIPT OF AUDIO RECORDING OF CONFERENCE

DATED NOVEMBER 17, 2009, HELD BEFORE

MAGISTRATE JUDGE ELIZABETH D. LAPORTE

ORIGINAL

Transcribed by: Freddie Reppond

[Beginning of recorded material]

THE CLERK: Calling Civil 07-1658, Oracle Corporation versus SAP AG, et al.

Counsel, please state your appearances for the record.

MR. HOWARD: Good afternoon, Your Honor. Jeff Howard for the Plaintiff, Oracle. And with me is Ms. Hann and Mr. Alinder and Ms. Gloss.

THE COURT: Good afternoon.

MR. COWAN: Good afternoon, Your Honor. Scot Cowan for Defendants. Along with me are Jason McDonnel and Heather Nugent.

THE COURT: Good afternoon.

All right. Well, I have to say that, reading about all these issues, I am not sure even 90 minutes is enough. But I'm not sure, you know, how long I could last time with these. So I mean I think that you, you know, need to prioritize. Maybe it is in the order of priority, but you tell me. You know, I'll certainly go as long as I can. And if 90 minutes is probably going to be necessary, but -- and I think that, you know, issue by issue I- sort of think that's how we've been doing it. But if you need even more so, that's fine. I think that's good to hear from one side and then the other. I'm not sure it's any different from what we've

doesn't require all of us to fly around the country to do the deposition.

THE COURT: I'm going to give twenty-five hours total. That includes the up to nine depositions for two hours each. And the rest you can figure out what you're going to do about it. But I think that you should take up the offer to have as much informal exchange about this. I mean it's much more efficient than a 30(b)(6).

MR. HOWARD: Very well, Your Honor.

THE COURT: And really, you know, I think there's just got to be more candor about what it is they're saying they don't know and that you need to know.

MR. HOWARD: That's why we wrote the letter. We went through all of the Bates numbers and all the information. Yep. But I just --

THE COURT: If I [inaudible]

MR. HOWARD: I take that point. Certainly, Your Honor.

Shall we move on then?

THE COURT: Yes.

MR. HOWARD: Okay. So the second issue is the new wave of discovery on a new issue in the case related to the six-year-old litigation between Oracle and

PeopleSoft related to Oracle's tender offer for PeopleSoft.

THE COURT: Yeah. Well, I'm very inclined to limit all of that.

MR. MCDONNEL: And we're inclined to work toward any possible efficiency, Your Honor, but we're talking about a group of nonprivileged documents, by definition, that have been produced by adverse parties once already. So whatever confidentiality issues they are -- exist -- are not so great as to have prevented them from being produced and used in one court case just across the Bay in Oakland --

THE COURT: But were they used under seal and all that sort of thing?

MR. MCDONNEL: They were. But we've got a protective order in this case that will allow at least as much protection. And as I read --

THE COURT: It's not nearly as relevant here. I mean they do have some relevance. But I guess what I have a problem with it seems to me more of the fact that the lawsuit was filed and that it lasted a certain amount of time and it had some -- and what was public knowledge -- probably newspapers and things like that, when we used to have newspapers, you know, that's what's relevant to having an impact. But the specifics of, you

know, exactly what was said at any particular time and certainly things that weren't made public, I don't see how they would have -- they're so tangentially related to damages.

MR. MCDONNEL: Well, but when I think about it, Your Honor, what we're talking about here are PeopleSoft employees, many of them very, very senior, who were saying that Oracle is causing a disruption in the PeopleSoft business and causing PeopleSoft customers to want to leave PeopleSoft and go elsewhere.

THE COURT: Right. And they said that in the complaint, but that's not --

MR. MCDONNEL: They did say that. But beneath that --

THE COURT: [inaudible] so how far, burrowing down, is it worth the bang for the buck? That's where I'm concerned.

MR. MCDONNEL: But the response to that is we served the subpoena two months ago. They are nonprivileged documents sitting some matter of blocks from here. We're happy to reimburse Folger & Levin, as they've asked whether we do, to review them. We're happy to have them made available to us so we can review them and then point out which ones we think are most appropriate for production and try to limit it that way.

And I mean on some of these issues it shouldn't be an all-or-nothing decision, no matter how you look at it. What they've identified is, in terms of the transcripts, there are fifteen transcripts --

THE COURT: Of what?

MR. MCDONNEL: Don't know --

THE COURT: Of a hearing?

MR. MCDONNEL: Of which they tell us. They just said fifteen transcripts and 1,500 pleadings and no -- none of the underlying documents --discovery documents themselves -- the e-mails and so forth. So we're really talking about those --

THE COURT: Those don't exist?

MR. MCDONNEL: That's what we've been told. They exist somewhere but not at Folger & Levin, apparently.

So what we're talking about are the nonprivileged pleadings and fifteen transcripts. Folger & Levin can present them to us. We can look at them. I don't know any reason why the transcripts wouldn't be made available to us outright. And as to the pleadings, we'll look through them with our own personnel -- won't take an hour of anyone else's time. If we see something -- the reason we don't just go get these from the court is because they have redacted a lot of material. So

we'll go through them, make reasonable efforts to pick our spots, and identify some limited number of documents that have been redacted from the filed pleadings and then make specific requests for those.

And, Your Honor, just going to --

THE COURT: Let me just look at this. Okay. So one of the issues was confidentiality of third-party [inaudible].

MR. HOWARD: That's exactly right, Your Honor.

MR. MCDONNEL: Yeah, but the way the protective order works in the Oakland case, their obligation is, when they get a subpoena, they have two days to give notice to third parties. That two days has come and gone two months ago. And they have no burden to make a -- to move for protective order or otherwise protect the third parties' interests. The third parties would have to come in. None of them have; there's virtually no chance any of them will. This litigation, as this counsel says, is five years old. Those parties produced the information under protective order in one case already. The odds that, if they get notice, which supposedly they already have, that it's going to be the same information five years later is going to be made available under a federal court protective order that anyone is going to come rushing in here and raise an

issue about it is virtually nil. These are issues that are being raised, in my humble opinion, to make it appear that it's a bigger problem than it really is.

THE COURT: What is Oracle's objection to this, if the burden of the issue is [inaudible] and, you know, paying for it, and doing an initial cut?

MR. HOWARD: Well, it's not eliminated at all, Your Honor, because we cannot just let them go into our law firm's litigation files and go burrowing through them. And the third-party issue is a very --

THE COURT: Have you -- has Folger segregated the transcripts and the pleadings?

MR. HOWARD: Physically, no, they haven't. What I understand is that they have -- now, I don't know what's happened now that Folger has moved around, but when I spoke with the lawyer there, they were looking at an electronic index that indicated 1,500 pleadings. Those pleadings likely have documents attached to them or information contained within them from third parties. And I don't think the protective order in that case was intended to require that when a subpoena came in for everything in the case that you then had two days to go through 1,500 pleadings to figure out which third party's information was implicated. But we had to do that.

THE COURT: [inaudible] I would think that it would be self-evident that some of those pleadings were irrelevant and some might look like they possibly could be relevant.

MR. MCDONNEL: This is what we're happy to do, Your Honor. We have not done a comprehensive look at them, because we haven't even gotten past the first step of determining whether they're willing to provide anything whatsoever.

THE COURT: Well, I guess my feeling is that I -- I can't give you any more guidance other than that I think you're -- you've asked for too much. I think you are making some headway coming up with proposals to reduce the burden, but I think it's too tangential that you would need all of them. Like you said, it seems to me the things that you need the most, to the extent you need them, the fact that these things were filed, if people didn't put quantitative numbers -- I don't know how far this thing got -- it's not going to be all that helpful. In other words, if they just, you know -- and I mean what do you -- and, furthermore, if you don't have time to convert these people into witnesses, what's admissible?

MR. MCDONNEL: The documents. It would all come in -- it can all come in through experts and it can

come in through impeachment. If they put a witness on the stand, as I suspect they will, who will take the position that the allegedly wrongful conduct of the Defendants was what caused customers to make enterprise software purchasing decisions other than staying with PeopleSoft indefinitely, those witnesses are going to be subject to impeachment, when PeopleSoft's own witnesses have stated under oath and other contexts -- or in pleadings in other contexts -- that it was the acts of Oracle Corporation and the acquisition itself with the threat that things are going to change mightily that caused the --

THE COURT: Well, it depends to some degree who. I mean if it was the president of PeopleSoft, yes. Or, you know, some very high-level person. Otherwise, they're going to say, I have never heard of that person. I don't know why they said what they did. If you're not impeaching the same person and they're not somebody who's -- you know, I don't think I can give much more guidance, but I think that you ought to -- Oracle ought to, at a minimum, ought to give the electronic index and subject to a clawback if there's something privileged. It might be in the index itself.

Then I think you, you know, would be justified in identifying some much more limited set of things that

you wanted them to look at and to be paid for and so forth. I think much more limited.

I mean I don't know what went on in that lawsuit, but there were things like fights over venue or motions to dismiss and all this other -- it's totally irrelevant. And unless, you know -- like I say, there's going to be very little that's relevant.

MR. HOWARD: And --

THE COURT: And sufficiently relevant to go to a lot of trouble.

MR. MCDONNEL: That guidance is helpful.

THE COURT: The fact that you're willing to pay for it does make a big difference. But, nonetheless, I just think, like I say, the fact that it happened is already public and that is by far your strongest fact.

MR. HOWARD: I would suggest, Your Honor, if we're going to do that, it ought to be that there is a customer in this case who is on the index from that case, which I don't know; because that's the only way -- to your point -- the only way that it could matter, because -- and I don't think even then -- because we have agreed, we've stipulated. That tender offer caused uncertainty. They said that was the fact they were trying to discover; and we said, yes, it did. All

tender offers do. And at that point unless they're going for information for a specific customer, it just couldn't be relevant to the --

THE COURT: Well, for direct impeachment. But I guess my advice would be [inaudible] as opposed to you're asking, well, somewhere in this historic pleading on page 44, you know, some person, we don't know who they are and where they are now, that such person --

MR. MCDONNEL: But it's more than impeachment. It's evidence of an economic impact on a particular segment of the marketplace.

THE COURT: Right. And this is the --

MR. MCDONNEL: The experts will be extrapolating from that. They're not going to be limited -- Your Honor, your guidance has, I think, been satisfactory.

THE COURT: Okay. This is the problem. How long have we spent on this?

MR. MCDONNEL: I understand. So I think we have enough --

MR. HOWARD: We're going to start picking up speed here.

THE COURT: We have to.

MR. HOWARD: The next issue is related to this last one we were just discussing. It's their request

STATE OF CALIFORNIA)

COUNTY OF SAN FRANCISCO)

CERTIFICATE OF REPORTER/TRANSCRIBER

I, the undersigned, a Shorthand Reporter and licensed Notary Public, do hereby certify that the above referenced recording was transcribed by me and that this transcript is a true record of that recording.

IN WITNESS WHEREOF I have hereunto set my hand on this 20th of November 2009 .

FREDDIE REPPOND